

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

CHRISTINA CONNELLY, :
 : C.A. No. K14C-09-002 WLW
 Plaintiff, :
 :
 v. :
 :
 STATE FARM MUTUAL :
 AUTOMOBILE INSURANCE CO. :
 and RONALD B. BROWN, JR., :
 :
 Defendants. :

Submitted: April 28, 2015

Decided: July 22, 2015

ORDER

Upon Defendant State Farm Mutual Automobile Insurance
Company's Motion to Dismiss.

Granted.

William D. Fletcher, Jr., Esquire of Schmittinger & Rodriguez, P.A., Dover,
Delaware; attorney for the Plaintiff.

Colin M. Shalk, Esquire of Casarino Christman Shalk Ransom & Doss, P.A.,
Wilmington, Delaware; attorney for Defendant State Farm Mutual Automobile
Insurance Company.

WITHAM, R.J.

The auto accident that instigated this litigation occurred on October 12, 2007. Plaintiff made a settlement offer below the policy limit, which the Defendant rejected. Although there are substantial pleadings in this case raising a number of issues, the key and sole issue before the Court is whether Plaintiff's complaint should be dismissed as it was filed outside the three year time period pursuant to the statute of limitations.¹ The Court holds that Defendant's motion to dismiss should be granted.

FACTS AND PROCEDURE

This complaint was filed September 2, 2014. Christina Connelly (hereinafter "Plaintiff") was involved in a motor vehicle accident where she was hit by Ronald Brown (hereinafter "Defendant Brown") on October 12, 2007. Defendant Brown is an insured of State Farm's (hereinafter "Defendant") with a policy limit of \$100,000 per person and \$300,000 per occurrence. Plaintiff previously filed a personal injury lawsuit against Defendant Brown, which was consolidated with a lawsuit Plaintiff filed against another Defendant.

The Plaintiff offered to settle her case against Defendant Brown for \$35,000.00 on May 10, 2011, but Defendant rejected the offer. Plaintiff subsequently won

¹ Defendant filed a Motion to Dismiss in Lieu of an Answer with the Court and Plaintiff filed a response. Plaintiff then filed a Motion to Amend the Complaint, which Defendant opposed. In Defendant's opposition to the Motion to Amend the Complaint, the running of the statute of limitations was cited as a reason to deny the amended complaint. Before the Commissioner, the parties argued about this point, but the motion was eventually granted on the grounds that she could not conclude that granting the amendment would have been futile. The Defendant then filed a Motion to Reconsider and Plaintiff filed an opposition. The Court will not respond to the Motion to Reconsider and subsequent filings as it is futile, since the original complaint was filed outside the statute of limitations.

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\$224,271.41 at trial. Plaintiff contends she is entitled to pre-judgment interest from the date of the car accident since the jury award was greater than her settlement offer. The Defendant challenged the verdict and prejudgment interest costs. On March 30, 2012, then-President Judge Vaughn denied the motions and ordered judgment to be entered against the Defendant for the jury award, plus pre-judgment interest of \$92,958.96, and Court costs in the amount of \$5,435.28, and found that the Defendant was liable for post-judgment interest for an additional \$10,580.64.

Defendant paid its policy limit of \$100,000, the post judgment interest of \$4,717.44 and costs of \$5,435.28. Defendant Brown has not made any payments on the remaining debt. Plaintiff holds that it is a judgment creditor of Defendant Brown, and as such has a legal right to enforce any contractual rights between Brown and State Farm for State Farm's bad faith and wrongful adjustment of the Plaintiff's claim.

Plaintiff argues that Defendant acted in bad faith, maliciously, and without any reasonable justification because it refused Plaintiff's settlement offer of \$35,000, and because Defendant payed out its policy limit of \$100,000 to Plaintiff (as opposed to the entire judgment value of \$244, 271.41) at the close of trial. Plaintiff argues this amount did not fully exhaust Defendant's policy limits exposure, and that as a result of its bad faith conduct, has exposed Defendant Brown to personal liability for an amount greater than \$181, 644.36. Plaintiff also argues the same claims on behalf of Defendant Brown because Defendant rejected her settlement offer of \$35,000.

Plaintiff amended her complaint to include an assignment of Defendant Brown's rights so that she could properly pursue an action against Defendant. This

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assignment occurred on March 3, 2015. On April 2, 2015, the parties went before the Commissioner to argue whether the complaint could be amended. The Commissioner granted Plaintiff's motion for an amended complaint. Now, Defendant's motion to dismiss concerns only the statute of limitations issue raised in its responsive pleadings.²

STANDARD OF REVIEW

When deciding a motion to dismiss, all factual allegations in the complaint are accepted as true.³ If the complaint and facts alleged are sufficient to support a claim on which relief may be granted, the motion is not proper and should be denied.⁴ That is, a motion to dismiss is decided on "whether a plaintiff may recover under any conceivable set of circumstances susceptible to proof under the complaint."⁵ Consequently, dismissal will only be warranted when "under no reasonable interpretation of the facts could the complaint state a claim for which relief might be granted."⁶ Stated differently, a complaint will not be dismissed unless it clearly lacks factual or legal merit.⁷

² Defendant argues that Plaintiff's claims are barred by the statute of limitations in Defendant State Farm's Response to Plaintiff's Motion for Leave to Amend the Complaint.

³ *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

⁴ *Id.*

⁵ *Id.*

⁶ *Hedenberg v. Raber*, 2004 WL 2191164, at *1 (Del. Super.).

⁷ *Diamond State Tel. Co. v. Univ. of Del.*, 269 A.2d 52, 58 (Del. 1970).

DISCUSSION

This Court is only addressing Defendant's Motion to Dismiss and its response to Plaintiff's Motion for Leave to Amend the Complaint, as it is here that Defendant raises statute of limitations claims.⁸ Defendant raises various issues in its pleadings, most importantly that the statute of limitations for a breach of contract claim relating to an insurance contract is subject to a three (3) year statute of limitations outlined in 10 *Del.C.* § 8106. The Defendant argues that the statute of limitations begins to run at the time of the breach, and the breach was when Defendant denied the settlement offer. Plaintiff argues Defendant's position is incorrect, and that the statute of limitations begins to run when a final judgment is entered against the insured and is in excess of the policy limit.⁹

Before the Commissioner, the Plaintiff argued that the statute of limitations did not begin until April 29, 2012, which was when, she argued, the date any sort of appeal expired. Plaintiff's main contention for this is that until there is a verdict in excess of the policy amount, no claim may be made. The Court disagrees.

A Defendant bears the burden of proving that a limitations period has lapsed and is time-barred.¹⁰ A Court will analyze when the statute of limitations began to run if the plaintiff has pleaded facts sufficient to show that a statute has been tolled,

⁸ The Court is not addressing the Defendant's Motion to Reconsider the granting of Plaintiff's amended complaint, as it is dismissing the complaint entirely. Thus, the motion is irrelevant.

⁹ Transcript, Page 7.

¹⁰ *Winner Acceptance Corp. v. Return on Capital Corp.*, 2008 WL 5352063, at *14 (Del. Ch. Dec. 23, 2008).

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and if the plaintiff was on inquiry notice of any allegations.¹¹ 10 *Del.C.* § 8106 holds that the three (3) year statute of limitations accrues at the time of the wrongful act, “even if the plaintiff is ignorant of the cause of action.”¹²

Plaintiff contends that Defendant acted in bad faith, maliciously, and without any reasonable justification in its failure to settle with Plaintiff at the outset of the case. Here, the complaint contends that Defendant breached its contractual duties in the aforesaid manner, on May 10, 2011. Plaintiff is explicit in *when* she believes she was aggrieved:

“*In May of 2011, Defendant State Farm acted in bad faith, maliciously, and without any reasonable justification refused to pay \$35,000 from its \$100,000 policy coverage limits to fully satisfy the Plaintiff’s claim.*”¹³

Plaintiff filed this action on September 3, 2014. The first question the Court must address is when the injury occurred. Plaintiff’s complaint uses May 2011 as the date of State Farms’ breach.¹⁴ Before the Commissioner, Plaintiff argued that April 29, 2012 was the date upon which the statute of limitations began because the time for an appeal expired on that date. Plaintiff’s reasoning is that no claim can exist

¹¹ *Id.*

¹² *See Albert v. Alex. Brown Mgmt. Servs., Inc.*, 2005 WL 1594085, at 13 (Del. Ch. June 29, 2005).

¹³ Complaint at 5 (emphasis added).

¹⁴ No specific date is given, merely that the Plaintiff made a demand of \$35,000 on May 10, 2011, and that it was subsequently rejected.

until there is a verdict in excess of the policy amount.

Both parties agreed that Plaintiff was insured up to \$100,000 per person and \$300,000 per occurrence.¹⁵ Plaintiff made a settlement demand well within the bounds of her policy limits, at \$35,000. Plaintiff's complaint establishes that it finds the moment of breach to be when Defendant denied the settlement offer. To be clear, Plaintiff repeated this for a second time when she stated: "Defendant State Farm acted in bad faith [...] in failing to accept the Plaintiff's settlement offer [...]"¹⁶ It is Plaintiff's own words that tell us when the statute of limitations began to run.

The Court, in keeping with well-settled Delaware law and pursuant to the statute of limitations in 10 *Del.C.* § 8106, finds that the statute began to run at the time of the wrongful act, which the Court finds is the date Defendant denied Plaintiff's settlement demand. At that moment, Plaintiff was made aware of the possibility that her claims would be denied, putting her on notice as to possible causes of action.¹⁷ Whether the date the statute began to run is the date the demand was made (May 10, 2011, expiring May 10, 2014), or the thirty days from which the

¹⁵ Although neither party has provided the Court with the original contract between Plaintiff and Defendant, both parties have stated in their pleadings that the Plaintiff was insured up to \$100,000 per person with \$300,000 per occurrence. Since the parties do not dispute this issue, the Court will consider it a stipulation agreed to by the parties, since it appears in both of their papers.

¹⁶ Complaint at para. 19.

¹⁷ The Superior Court has explicitly held that at the moment of Plaintiff's knowledge of a possible breach, the statute began to run: "Viewing the record in the light most favorable to the plaintiff, the Court finds [...] plaintiff was sufficiently aware of [Defendant's] position on coverage so as to put her on notice of the possible existence of her various causes of action." *Hostetter v. Hartford Ins. Co.*, 1992 WL 179423, at *4 (Del. Super. July 13, 1992).

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Defendant had to respond to the demand (June 10, 2011, expiring June 10, 2014), both dates fall outside the statute of limitations, as timely filing would have occurred prior to June 10, 2014 (using the latter date). However, the complaint was not filed until September 2014.

The Court finds no reason to involve itself in the details of the insurance contract between the parties, as they have effectively stipulated to the terms most relevant: the time period of denial of the settlement demand (May-June 2011) and the amount of the demand (\$35,000).

Pursuant to Delaware Superior Court Civil Rule 12(b)(6), this Court does not find that under any reasonable set of circumstances could the Plaintiff recover, as her claims are barred by the statute of limitations. The Court is granting Defendant's motion to dismiss, based solely on the statute of limitations issue which arose in Defendant's response to Plaintiff's motion for leave to amend the complaint. Lastly, the Court need not analyze whether the Plaintiff's amended complaint properly relates back to the originally filed complaint, as the original is dismissed pursuant to the statute of limitations having run.

CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss is **GRANTED**.
IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh